IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No. 339 of 2004

Reserved on : 3.8.2007

Date of Decision : August 16, 2007

State of HP through Secretary (PW) …Appellant

Versus:

Khem Chand & another …Respondents

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting? No

For the appellant: Mr. C. B. Singh, Dy. Advocate General

For respondent No.1 : Mr. Dinesh Sharma, Advocate.

For respondent No.2: None

Sanjay Karol, J.

The present appeal arises out of the award dated 23.8..2003 passed by the Additional District Judge, Solan, in Land Reference Petition No. 10-S/4 of 2002 titled as Khem Chand & another vs. State of H.P., whereby the compensation awarded by the Collector, for acquisition of the respondent's land has been enhanced from Rs.11,925/- to Rs.2,38,500/- per bigha.

Petitioners' land comprising khasra No. 101/1 and 361/104/1 measuring 2-9 bighas situate in Mauja Kotli, Tehsil

Arki, District Solan, H.P. was acquired for construction of 'Shalaghat-Arki-Kunihar-Barotiwala' road vide Notification dated 7.3.1998 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), and also the award No. 32/2000 dated 16.6.2000 passed by the Collector.

Keeping in view the category /classification of the respondent's land, which is uncultivable, the Collector assessed the compensation payable for acquisition of the land at Rs.11,925/- per bigha. Perusal of the award also shows that the Collector had classified the land into two categories, namely, cultivable land for which the compensation was assessed at Rs.2,38,500/- per bigha and for uncultivable land at Rs.11,925/- per bigha.

Being aggrieved of the same, the respondents-claimants preferred reference petition under Section 18 of the Act and in order to prove their claim, they examined four witnesses and placed on record sale instances Ext.P1 and Ext. PW-2/A. The Court below based on the deposition of the witnesses held the land to be of great commercial use and value and also its classification relying upon the ratio of law laid down in ***LAC, Solan and another*** vs. ***Bhoop Ram*** (1997(2) Shimla Law Cases 229 and ***Suresh Kumar*** v. ***Improvement Trust, Bhopal*** (1989 LACC 263) awarded a sum of Rs.2,38,500/- per bigha being the highest rate awarded by the Collector in terms of his award.

Learned Deputy Advocate General has argued that the evidence produced by the petitioners in terms of Ext.P1 had to be considered for determining the fair market value as the said sale transaction pertains to the very same village where the land was acquired.

On the contrary, learned counsel for the respondent has supported the award by submitting that the land owners have been subjected to great hardship inasmuch as the petitioners total land including the land in question was taken over in the year 1964 by the appellant for the purpose of construction of road. However, no compensation was paid for the land in question and they were forced to litigate to seek redressal of their grievance and it was only with the intervention of this Court in terms of its decision dated 7.11.1996 in RSA 180/1983 titled as Santi & others vs. State of H.P. & others that the appellant conceded to awarding suitable compensation by taking steps for acquisition of the land in question. He submits that land owners were not only forced to litigate but also were deprived of legitimate use of their property for more than three decades, therefore, this Court, balancing the equities and keeping in view the ratio of law laid down by this Court uphold the award.

I have examined the statements of the witnesses Khem Chand (PW-1), Laxmi Chand (PW-2), Advesh Kumar (PW-3) & Sukh Ram (PW-4). It is clear that the acquired land is on

the National Highway and is at a place called Shalaghat, which is a developed area having approximately 35 to 40 shops. The place has a Patwarkhana, a dispensary, a school, a police post, office of the Electricity Department, office of the PWD and is at a distance of 5 kms. from the township of Arki and 10 kms. from the township of Darlaghat, where the famous Ambuja Cement Factory is situated. Shalaghat is a junction on the Shimla Mandi National Highway and from this place, there is a bifurcation of road which leads to the townships of Arki, Kunihar, Bhararighat, Nalagarh. Due to the development of this area, Shalaghat, infact, is in the outer skirts of the township of Arki. According to the witness, the potentiality of growth and putting the property to commercial use is same as that of the land in the township of Arki and the fair market value of the land is approximately Rs.5,00,000/- per bigha. No doubt, Ext.P1 has been placed on record by the claimants but record shows that not only it relates to very small parcel of the land but the same was tendered by the counsel at the time of hearing and no evidence was led to show the similarity of the lands with regard to the use, classification and category. I am, therefore, in agreement with the submission made by the learned counsel for the respondents that the same cannot be considered as the conclusive evidence to determine the fair market value of the acquired land. It is not disputed that the land is abutting the National Highway and in fact part of it has been used for the said purpose.

This Court in ***Bhoop Ram*** (supra) has held as under:-

> "The Land Acquisition Collector and the District Judge have determined the market value at a lesser rate for the acquired land, which was classified as Bangar Doem, Banar Kadim, Ghasni. Charand and Gair Mumkin but in our view the classification of acquired land for the agricultural purpose is not relevant looking to the common purpose of acquisition for the construction of road and uniform rate of Rs.40 per square metre or Rs.30,000 per Bigha should be awarded irrespective of the classification of the acquired land."

Therefore, relying upon the ratio of law laid down by this Court in ***Bhoop Ram*** (supra), I am of the considered view that the Court below has correctly awarded the compensation to the respondents for acquisition of their land which is a subject matter of the present appeal. Keeping in view the aforesaid circumstances, I uphold the award passed by the Addl. District Judge and the present appeal is accordingly dismissed.

(Sanjay Karol),
Judge.

August 16, 2007
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